

Chapter 200 - Section 218 Program

Subchapter 01 - Section 218 Program

20001.201 Program Overview

State and local government employees are covered for Social Security and Medicare through a Section 218 Agreement between the State and the Social Security Administration or mandatorily under Federal law.

A. SECTION 218 HISTORY

When the Social Security Act (Act) was enacted in 1935, State and local government employees were excluded from Social Security coverage because there was a legal question regarding the Federal government's authority to tax State and local governments.

Because many governmental employees did not have their own retirement system, the 1950 Social Security Amendments added Section 218 to the Act to make Social Security coverage for State and local government employees possible.

Beginning in 1951, States were allowed to enter into voluntary agreements with the Federal government to provide Social Security coverage to State and local government employees who were not covered by a retirement system. These voluntary agreements are called Section 218 Agreements because they are authorized by Section 218 of the Act.

The Social Security Amendments of 1954 expanded the Act to allow States to extend Social Security coverage to State and local government employees who were members of public retirement system (except police officers and firefighters) provided coverage was authorized by the State and approved through a voluntary referendum of all retirement system members.

In 1956, the Act was amended to authorize certain States to divide retirement systems into two separate groups: those who desired coverage and those who did not. The 1956 Act also authorized certain States to extend Social Security coverage to police officers and firefighters covered by a retirement system.

Before 1983, States could terminate Social Security coverage for employees covered under the State's Section 218 Agreement. The 1983 Social Security Amendments rescinded this provision of the Act and prohibited States from terminating coverage beginning April 20, 1983.

All 50 States, Puerto Rico, the Virgin Islands, and approximately 60 interstate instrumentalities have a Section 218 Agreement with SSA. Because of the voluntary nature of Section 218 Agreements, the extent of Social Security coverage varies from State to State.

B. MANDATORY SOCIAL SECURITY AND MEDICARE COVERAGE

Medicare coverage became mandatory for State and local government employees hired or rehired after March 31, 1986. Beginning July 2, 1991, Social Security and Medicare coverage is mandatory for

State and local governments employees who are not members of a public retirement system and who are not covered under a Section 218 Agreement.

20001.210 Determinations Regarding Section 218 Agreements

Final determinations regarding State Section 218 Agreements are governed by Federal law and are made by SSA. These determinations may be based on decisions regarding certain specific issues to which either Federal or State law is applied. Where State law may have a bearing on the issue, an opinion of the State legal officer may be requested if one does not already exist. The opinion will be given due weight in making the final determination.

20001.220 When Federal and State Laws Apply

Federal law governs determinations involving coverage of State and local government employees. These determinations may be based on decisions regarding specific issues to which Federal law is applied and other issues to which State law is applied. It is important to know whether Federal or State law is applied in making a determination on a specific issue.

Generally, questions involving interpretation or application of State law are resolved by the authorized legal officers of the State in accordance with applicable State and local laws, regulations and the State court decisions. Listed below are the more significant issues that will require such determinations and the authority under which the determinations are to be made:

Federal Law:

Does an employer-employee relationship exist?

What is the identity of the employer?

Are earnings wages?

What are emergency services?

What are student services?

State Law:

Who is an officer of a state or political subdivision?

Is an entity a political subdivision?

What is the legal status of a new entity?

Is a function governmental or proprietary?

Is a position under a retirement system?

Which employees are eligible for membership in a retirement system?

Who is an employee for purposes of retirement system participation?

What is the definition of a police officer or firefighter position?

20001.230 Federal-State Agreements

Section 218 Agreements are between the State and the SSA. SSA cannot enter into an agreement with a political subdivision. The State enters into an agreement with SSA on behalf of a political entity. The Section 218 Agreement is a legal document, which incorporates the provisions, definitions, and conditions for coverage, consistent with Federal and State laws.

20001.240 Negotiations between the State and the Political Entity

Negotiations between a State and political subdivisions of the State in connection with coverage under the State's agreement are generally intrastate matters. The State determines for whom and whether and when to extend Section 218 coverage subject to the requirements of Section 218 of the Act. For example, whether and when to hold referenda on the coverage of services of individuals in positions under retirement systems is a matter to be determined under State and/or local law, subject to Section 218 requirements.

There are no Section 218 requirements that compel State or local government employers to provide information about Social Security coverage to employees. Absent a State or local law or regulatory requirement holding otherwise, the employer may decide whether to discuss Social Security coverage with its employees or to approach the State Social Security Administrator to pursue the extension of coverage. The issue is an internal matter between the State and the public employer.

The Act, Social Security regulations, and Section 218 requirements are silent on the issue of State and political subdivision negotiations, as is consistent with the voluntary nature of extending Section 218 coverage.

20001.250 Period of Limitation Ends on Non-Work Day

Federal law and regulations provide a period within which an act or action is required for a number of situations, e.g., the date on which a modification must be delivered. If the period ends on a Saturday, Sunday, legal holiday or any other Federal non-work day, action taken on the next Federal business day will be deemed to be within the time limitation.

20001.260 Individual's Right to Appeal

An individual who disagrees with a determination on his or her claim for benefits or the earnings record has the right to request a correction of the earnings record or a reconsideration of the determination by SSA. The request for reconsideration should be filed with the claimant's local Social Security office.

20001.270 Employer's Right to Appeal

If an employer disagrees with an IRS assessment that FICA taxes are due for services covered under a Section 218 Agreement, the employer should appeal the determination with the IRS. IRS will coordinate the coverage issue with SSA as necessary.